

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0474**  
**Corporate Income Tax**  
**Tax Period 1999-2000**

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**ISSUE**

**1. Gross Income Tax-Imposition**

**Authority:** IC 6-8.1-5-1(b); IC 6-2.1-2-2(a); 45 IAC 1.1-6-2; 45 IAC 1.1-1-3; 45 IAC 3.1-1-153(c)(1).

The taxpayer protests the imposition of Indiana gross income tax.

**2. Adjusted Gross Income Tax- Imposition**

**Authority:** IC 6-3-2-1(a); IC 6-3-2-2; IC 6-3-2-2.2.

The taxpayer protests the imposition of Indiana adjusted gross income tax.

**STATEMENT OF FACTS**

Taxpayer, a non-Indiana resident, was the general partner in two partnerships. Partnership "A" was engaged in retail and wholesale propane operations, both within and outside Indiana. Partnership "B" had no business activities, other than holding the corporation retailing propane. On March 26, 1999, the taxpayer sold its investment in the partnerships and became inactive. Two short period returns were filed for 1999.

Pursuant to an audit, the Indiana Department of Revenue, (department), assessed additional gross income tax, adjusted gross income tax interest and penalties for the tax period 1998-1999. The taxpayer protested the assessment concerning the imposition of Indiana gross income tax and Indiana adjusted gross income tax on the gain from the taxpayer's sale of its partnership interests for the 1999 tax year. The department held a hearing and now presents this Letter of Findings.

**1. Gross Income Tax-Imposition**

### **Discussion**

In 1999, the taxpayer sold its interests in the partnerships. The taxpayer failed to report these sales in its gross income calculation for the year 1999. On audit, the Department included the proceeds from the taxpayer's sale of the partnership interest in the taxpayer's gross income. The taxpayer protested this inclusion. The taxpayer argues the receipts from the sale of its intangible (the partnership interests) are not subject to the Indiana gross income tax. The taxpayer contends that since the gains were not derived from activities within Indiana, the department should not impose a tax on the proceeds from the sale.

Indiana Department of Revenue assessments are prima facie evidence that departments claim for unpaid taxes is valid. IC 6-8.1-5-1(b). The taxpayer has the burden of proving whether the department incorrectly imposed the assessment. Id.

IC 6-2.1-2-2 provides:

- (a) An income tax, known as the gross income tax, is imposed upon the receipt of:
  - (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and
  - (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

45 IAC 1.1-6-2 clarifies when an intangible is includible in gross income and provides:

- (b) "Except as provided in subsection (c) receipts derived from an intangible are included in gross income.
- (c) Receipts derived from an intangible are not included in gross income under the following situations:
  - (1) The intangible forms an integral part of:
    - (A) a trade or business situated and regularly carried on at a business situs outside Indiana; or
    - (B) activities incident to such trade or business.
  - (2) The intangible does not form an integral part of a trade or business situated and regularly carried on at a business situs in Indiana, and the taxpayer's commercial domicile is located outside Indiana.
  - (3) The receipts from the intangible are otherwise excluded from gross income under IC 6-2.1-1-2 or 45 IAC 1.1-3-3(c)(7).
- (d) In determining whether an intangible forms an integral part of a trade or business or activities incident thereto under subsection (c), it is the connection of the intangible itself to such trade or business or activities incident thereto that is the controlling factor. The physical location of the

evidence of the intangible (share of stock, bond, etc.) is not a controlling factor. Also any activities related to the sale of an intangible occur after the fact and are never determinative.

(e) As used in this section, “commercial domicile” means the nerve center of the taxpayer where a majority of the activities and functions of the business are performed. . . .

45 IAC 1.1-1-3 defines “business situs” as:

- (a) A “business situs” arises where possession and control of a property right have been localized in some business or investment activity away from the owner’s domicile.
- (b) A taxpayer may establish a business situs in ways, including, but not limited to the following:
- (7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.

The department takes the view that, if a taxpayer has a commercial domicile outside of Indiana, the gains from the sale of its intangible are subject to the gross income tax when: (1) The taxpayer had a “business situs” in Indiana; and (2) The intangible sold formed an integral part of the taxpayer’s business.

The taxpayer’s sole business was managing and investing in the underlying operating partnerships. The taxpayer had a “business situs” in Indiana through its capacity as a general partner in the partnerships. Based on these facts, the taxpayer’s proceeds from the sale of the partnership interests are subject to the gross income tax.

The proceeds from the sale of the taxpayer’s partnership interest have been included in the taxable gross income per audit. Since the partnership conducted business both within and outside Indiana, the portions of the proceeds attributable to Indiana have been calculated by using the partnership’s three factor formula. 45 IAC 3.1-1-153(c)(1).

The taxpayer insists the department erred in its assessment because the activities associated with the sale of the partnership interest all took place outside of Indiana. The sale was negotiated and carried out over a two-year period by the taxpayer’s CEO in New York City.

The taxpayer errs in its argument. 45 IAC 1.1-6-2 (a), as cited above, states income resulting from activities in Indiana are subject to the Indiana gross income tax. In the taxpayer’s case, a portion of the intangible (partnership interest) sold was directly related to the taxpayer’s retail propane operations, which does business in Indiana. Thus, the assessment of the Indiana gross income tax is clearly related to the taxpayer’s Indiana business.

### **Finding**

For the above reasons, the department denies the taxpayer’s protest.

## **2. Adjusted Gross Income Tax- Imposition**

### **Discussion**

The department assessed Indiana adjusted gross income tax on a portion of the gain from the taxpayer's sale of its partnership interest. The department maintains a portion of the gain, derived from the sale of the partnership interest, is business income attributable to Indiana. The taxpayer protested this assessment.

IC 6-3-2-1(a) imposes an adjusted gross income tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person."

The taxpayer is domicile in Connecticut and is not a resident of Indiana. Therefore, the issue raised is whether the taxpayer's income from the sale of its partnership interest was from an Indiana source, that would subject the taxpayer to the Indiana adjusted gross income tax

IC 6-3-2-2 defines the term "adjusted gross income derived from sources within Indiana." IC 6-3-2-2(a)(5) provides:

Income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property, if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

IC 6-3-2-2.2 explains when receipt of income from an intangible is attributable to Indiana. IC 6-3-2-2.2 provides:

- (a) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property are attributable to this state if the security or sale property is located in Indiana.
- (b) Interest income and other receipts from consumer loans not secured by real or tangible personal property are attributable to this state if the loan is made to a resident of Indiana, whether at a place of business, by a traveling loan officer, by mail, by telephone, or by other electronic means.
- (c) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property are attributable to this state if the proceeds of the loan are to be applied in Indiana. If it cannot be determined where the funds are to be applied, the income and receipts are attributable to the state in which the business applied for the loan. As used in this section, "applied for," means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.

(d) Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees are attributable to the state to which the card charges and fees are regularly billed.

(e) Receipts from the performance of fiduciary and other services are attributable to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one (1) state, the receipts from those benefits are attributable to this state on a pro rata basis according to the portion of the benefits consumed in Indiana.

(f) Receipts from the issuance of traveler's checks, money orders, or United States savings bonds are attributable to the state in which the traveler's checks, money orders, or bonds are purchased.

(g) Receipts in the form of dividends from investments are attributable to this state if the taxpayer's commercial domicile is in Indiana.

There are no provisions within subsections (a) through (g) of IC 6-3-2-2.2 that would allow the sale of a partnership interest by a non domiciled corporation to be attributable to Indiana.

### **Finding**

The department sustains the taxpayer's protest.